IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 25, 2006 at Knoxville

STATE OF TENNESSEE v. CHARLES BRANDON HANNER

Appeal from the Circuit Court for Robertson County
No. 04-0090 Michael R. Jones, Judge

No. M2005-01944-CCA-R3-CD - Filed June 8, 2006

Indicted for rape of a child, the defendant, Brandon Hanner, was convicted by a jury of aggravated sexual battery. He appeals and challenges the sufficiency of the convicting evidence. Because the record supports the jury's verdict, we affirm the conviction.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Ann Marie Kroeger, Springfield, Tennessee, for the Appellant, Charles Brandon Hanner.

Paul G. Summers, Attorney General & Reporter; Sophia S. Lee, Assistant Attorney General; and Dent Morris, District Attorney General, for the Appellee, State of Tennessee.

OPINION

Jessica Plank, a nurse employed by the Robertson County school system, testified at trial that she worked at the East Robertson Elementary School in 2004. In that capacity, in January 2004, she met with the victim, a female student at the school, concerning the victim's irritable bowel syndrome, a condition for which the victim was under the ongoing care of a physician. The victim mentioned she had difficulty sleeping because of nightmares and fear of intruders. With prompting, the victim told Ms. Plank that the victim's uncle had stayed in her home, had slept in the same bed with her, and had put his fingers in her vagina. Ms. Plank called the Department of Children's Services (DCS), and a DCS representative came to the school the next morning to interview the victim.

Terri Hanner Duncan testified that she is the defendant's sister and the victim's mother. The victim was born December 15, 1992. In late January or February 2003, the defendant stayed overnight in the Duncan home for a period of time so Ms. Duncan could facilitate his going to work on time in the mornings. On some nights, the defendant slept on the couch, and on other

nights he slept in the bedroom that the victim and her younger brother shared. Ms. Duncan testified that the defendant was over 18 years of age at the time. Ms. Duncan admitted that she had never seen the defendant improperly behave toward the victim.

Michael Carlisle, a Robertson County sheriff's department sergeant, testified that DCS asked him to investigate the case, and he interviewed the defendant. Sergeant Carlisle introduced an audiotape of the interview and a transcript of the audiotape. In the interview, after Sergeant Carlisle read an account of the victim's allegations that the defendant had twice inserted his fingers into her vagina, the defendant responded, "Well, I'm going to go ahead and tell you – that I was young – [a]nd I was not [] 18. I was younger. And, yes, I did." He added, "[S]he said exactly what took place. That was it." When the sergeant asked the defendant whether he had placed his finger "in" the victim's vagina, however, the defendant responded, "No, I just touched it." The defendant recounted that the activity occurred only once, when he was 16 or 17 years old. When quizzed again on the issue of vaginal penetration, the defendant said, "I never inserted my finger. It may have barely touched the inside of it, but it never . . . [not finishing statement]."

Phillip Duncan testified that he is the victim's father and the defendant's brother-in-law. When the defendant got into trouble with his employer over tardiness, Mr. Duncan testified that, in January or February 2003, "[W]e got him over to the house so that he would get to work on time and so he could go full-time . . . ." Prior to January or February 2003, the defendant had last stayed overnight in the Duncan's home when he was "a kid."

The victim testified that she was 12 years old at the time of trial. She recounted that, when she was in the fourth grade, the defendant, her uncle, stayed overnight with her family. The victim testified, "He touched me," using his finger, "[w]here you pee at." When asked whether the defendant touched her on the outside or inside, the victim responded, "Inside." She testified that the activity occurred two or three times. She acknowledged that the defendant stopped the assault when she told him to. The victim denied telling Nurse Plank what had happened with the defendant. The victim testified that she was ten years old when the assaults occurred.

Nancy Bellar testified that she was a human resources "generalist" for Electrolux, the company that employed the defendant in 2003. She testified that Electrolux does not employ persons under 18 years of age. The defendant was hired April 26, 2003, but may have worked at Electrolux before that as an employee of a temporary employment firm. According to company records, the defendant was born November 8, 1983.

On behalf of the defendant, Jonathan Hulsey testified that he had known the defendant for 16 years and opined that "the [defendant's] a hard worker and he's always told the truth and never told a lie, that I know of. He's just [an] all-around good guy to me."

Stephanie Hulsey testified that she had known the defendant for a year and that he had lived with her "a little while." She characterized the defendant as "a good man," "loving," and

"caring." She testified that the defendant had watched her kids and treated them "like they were his own."

Jeannie Redferin, Jonathan Hulsey's aunt, testified that she had known the defendant for 16 years and that he and her nephew had stayed at her house for several months. She testified that she would trust the defendant "with [her] life." She had no hesitation about trusting the defendant to be around her seven-year-old son. She opined that the defendant had always been a gentleman with her; he had served as her designated driver and had never been forward with her.

The defendant testified that he neither raped nor offensively touched the victim and that the sexual battery described by him in his statement occurred by accident when he was still a minor. He denied spending the night at the Duncan's house and testified, "If I did spend the night over there, I was on the couch and my sister was in the floor." He testified that he was fearful when he gave Sergeant Carlisle a statement at the police department and that the sergeant did not warn him of his right to remain silent and of the seriousness of the allegations. On cross-examination, the defendant testified that he lied throughout his pretrial statement.

The defendant's sole issue on appeal is whether the convicting evidence is legally sufficient to support the jury's verdict of aggravated sexual battery.

When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990), *overruled on other grounds by State v. Hooper*, 29 S.W.3d 1, 8 (Tenn. 2000).

In determining the sufficiency of the evidence, the appellate court may not reweigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Nor may this court substitute its inferences for those drawn by the trier of fact from the evidence. *Liakas v. State*, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956); *Farmer v. State*, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Cabbage*, 571 S.W.2d at 835.

"Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances: . . . The victim

is less than thirteen (13) years of age." Tenn. Code Ann. § 39-13-504(a) (2003). Aggravated sexual battery is a Class B felony. *Id.* § 39-13-504(b).

> "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

Id. § 39-13-501(6).

Because the indicted offense in the present case was rape of a child, the state endeavored to prove that the defendant penetrated the victim's vagina. *See id.* § 39-13-503(a) (establishing penetration as an element of rape); *see also id.* § 39-13-522 (increasing class of rape offense when the victim is less than 13 years of age). Although the jury acquitted him of rape of a child, the defendant is vexed that, despite the jury's apparent rejection of the victim's testimony that the defendant had penetrated her, it accredited the victim's testimony to the extent that it found an assault equating to aggravated sexual battery. Additionally, the defendant complains that various inconsistencies in the trial testimony undermine the legal sufficiency of the convicting evidence.

We look first at the claimed inconsistency in the jury's verdict, but in fulfilling our role of evaluating the sufficiency of the convicting evidence, we do not quibble with the jury's apparent acceptance of some of the testimony of a prosecution witness while rejecting other portions of the same testimony. The trier of fact is "free to accept or reject any part, even if some other part was willfully false, under elementary rules for considering evidence." *State v. Roger W. Teague,* No. 85-210-III, slip op. at 3 (Tenn. Crim. App., Nashville, Aug. 19, 1986). Thus, we are not permitted to disturb the jury's resolution of the issue of penetration that resulted in an aggravated sexual battery conviction.

Regarding a number of perceived inconsistencies in the evidence, we are bound by the axiom that, we do not resolve credibility issues, draw our own inferences from the facts, or usurp the jury's domain by re-adjudicating factual determinations. Our task is merely to determine whether the evidence, *in the light most favorable to the state* and without considering credibility issues or factual disputes, factually establishes the elements of the conviction offense. In this case and in that light, the evidence, via the victim's testimony and the defendant's pretrial statement, established the elements of aggravated sexual battery.

Accordingly, the conviction is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE